

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: David Justin Ross et al.

Serial No. 10/003,719

Examiner: Zia, Syed

Confirmation No. 2644

Filed: October 30, 2001

Group Art Unit: 2131

For: Verification Engine For User Authentication

Date: November 4, 2009

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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/ Lisa F. Walsh /
Date: November 4, 2009

PETITION TO THE DIRECTOR

**TO WITHDRAW HOLDING OF ABANDONMENT
PURSUANT TO 37 C.F.R. Section 1.181(a)(1)**

A. Statement of Facts

A Notice of Abandonment was mailed by the Office on 10/13/2009 in connection with the utility patent application identified above. The Notice states that applicant failed to timely file a proper reply to the Office letter mailed on October 6, 2008. The paper mailed October 6, 2008 was a final rejection of the application. No claims are allowed.

Applicant filed a Pre-Appeal Brief Request for Review (PABR) in this case on March 6, 2009 in view of the final rejection. The PABR was filed, as required, with a Notice of Appeal to the BPAI, also dated March 6, 2009, appealing from the final rejection of October 6, 2008. The appropriate fees were paid, including the two-month extension of time fee.

A "Notice of Panel Decision from Pre-Appeal Brief Review" was mailed by the Office on May 5, 2009 to applicant's attorney. The decision was, "Proceed to Board of Patent Appeals and Interferences." Applicant had not filed a Brief on Appeal up to that point, and has not submitted a Brief on Appeal to date.

The Notice of Panel Decision further indicated that, "The time period for filing an appeal brief will be reset to be one month from mailing this decision, or the balance of the two-month time period running from the receipt of the notice of appeal, whichever is greater. Further, the time period for filing of the appeal brief is extendible under 37 CFR 1.136 ..."

Based on that notice, applicant understood that the case would remain pending until November 5, 2009, based on the one-month reset time period from the mailing of the Notice of Decision (ending June 5, 2009), extended by up to five additional months under Section 1.136 to a final deadline of November 5, 2009. For that reason, applicant believes the Notice of Abandonment mailed October 13, 2009 was improper.

Applicant requested in two telephone conversations that the Examiner withdraw the Notice of Abandonment for the reasons explained herein. The Examiner declined to do so. The Examiner observed that the Notice of Decision provides additional time *for filing the appeal brief*, not for taking other actions. However, applicant believes that other actions such as filing a continuation may be taken during the time period allowed for filing the appeal brief. The Examiner also suggested filing a continuation application, but applicant believes that a continuation may not be filed after abandonment, 37 CFR 1.53(d).

B. Point to be Reviewed

Whether the holding of abandonment was proper.

C. Action Requested

Applicant respectfully requests that the Director rescind the Notice of Abandonment mailed 10/13/2009, withdraw the holding of abandonment, or otherwise restore the subject application to pending status, nunc pro tunc to the date of the Notice of Abandonment. Applicant seeks to have the case pending for the purpose of filing a continuation or an RCE of the subject application by November 5, 2009 (tomorrow).

D. Petition Fees

It appears that no fee is required for this petition, MPEP 711.03(c). Applicant nonetheless submits a Fee Authorization sheet with this petition, intended to authorize charging of the appropriate fee to applicant's attorneys' PTO deposit account if a fee is due.

E. Extension of Time Fees

It is believed that the appropriate extension fees will be due at the time of filing applicant's further submission or reply, such as a continuation application. Nevertheless, to

be cautious, an extension fee of \$1,175.00 is submitted, for reply within the fifth month (small entity), measured from the June 5 date discussed above. If this fee is not required at this juncture, refund is requested.

Customer No. 73552

Respectfully submitted,
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